UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Nora Mead Brownell, and Suedeen G. Kelly.

Bay Gas Storage Company, Ltd. Docket No. PR04-9-002

ORDER ON REHEARING

(Issued November 8, 2005)

1. On July 1, 2005, Bay Gas Storage Company, Ltd. (Bay Gas) requested clarification or, in the alternative, rehearing of the appropriateness of the billing determinants used to design rates in the Commission's order dated June 2, 2005 (June 2 Order).[1] We will grant rehearing as discussed below.

I. Background

2. In 1994, Bay Gas began operations of its original facilities,[2] which include a 22-mile 20-inch diameter pipeline that runs due south from Bay Gas's storage facilities at McIntosh, Alabama, to its Salco Station, located north of Mobile, at Axis, Alabama. The original facilities interconnect with Gulf South Pipeline Company, L.P. (Gulf South) and Mobile Gas Service Corporation (Mobile Gas) at Salco Station. In 2002, Bay Gas constructed the Whistler spur facilities, which generally run southwest from Salco Station 17.5 miles to Whistler Junction, where there is another interconnection with Gulf South and Mobile Gas.

3. Before this rate case, Bay Gas had separate transportation rates for service on each set of facilities. On March 9, 2004, as supplemented on April 9, 2004, Bay Gas sought approval of rolled-in rates for firm and interruptible transportation services on the

[1] *Bay Gas Storage Co., Ltd.*, 111 FERC ¶ 61,345 (2005).

[2] *Bay Gas Storage Co., Ltd.*, 66 FERC ¶ 61,354 (1994) (approving market-based rates for original facilities).

combined facilities, both the 17.5-mile Whistler spur facilities and the 22-mile original facilities, under the Natural Gas Policy Act of 1978 (NGPA) section 311.[3]

4. Southern Company Services, Inc. (Southern), on behalf of its subsidiary Alabama Power Company (Alabama Power), requested the Commission to clarify that, if the rates to be paid by shippers on the older pipeline are to include the costs of the formerly incrementally-priced Whistler spur facilities, then those shippers—including Southern/Alabama Power—should be given flexible point rights throughout the system.

5. Southern filed additional comments, arguing, among other things, that Bay Gas proposes to depart from its existing practice of charging the costs of the Whistler spur facilities to only those shippers using those facilities and to include the costs of the newer facilities in the rates applicable to the shippers on the original facilities. Southern also argued that the fact that an intrastate pipeline is discounting its rates does not justify including improper charges in the maximum interstate transportation rate.[4]

6. A Staff Panel was convened in order to permit parties an opportunity to present oral views, data, and arguments in accordance with NGPA section 502(b). The Staff Panel requested that Bay Gas file additional information. The requested information included a summary of all of Bay Gas's contracts with its customers, including the level of firm and interruptible service provided under those contracts, as well as cost of service information.

7. The Commission approved Bay Gas's rolled-in rate proposal. We determined that the rolled-in rate issue in this case should be decided based on the Commission's current policy concerning rolled-in versus incremental rates on interstate pipelines, as set forth in our 1999 Pricing Policy Statement.[5] Under that policy statement, the Commission changed the focus of its policy so that the primary goal is to achieve efficient pricing signals to expansion shippers and existing pipeline customers, while remaining within the pipeline's revenue requirement. When an expansion to an interstate pipeline project is certificated, the Commission requires that existing shippers not be required to subsidize

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[3] *Bay Gas Storage Co., Ltd.*, 97 FERC ¶ 61,020 (2001) (approving rates for Whistler spur facilities); 99 FERC ¶ 61,263 (2002) (approving rates for non-Whistler spur facilities).

[4] Southern May 7 Comments at 4 (citing *GulfTerra Texas Pipeline, L.P.*, 106 FERC ¶ 61,184, at P 25 (2004), which notes that the Commission's duty is to assure that maximum rates are fair and equitable).

[5] *Policy Statement concerning Certification of New Interstate Natural Gas Pipeline Facilities*, 88 FERC ¶ 61,227 (1999), 90 FERC ¶ 61,128 (2000), *order on reh'g*, 92 FERC ¶ 61,094 (2000) (1999 Pricing Policy Statement).

the expansion. This generally means that expansions will be priced incrementally so that expansion shippers will have to pay the full costs of the project, without subsidy from the existing customers through rolled-in pricing. This will help ensure that the market finds the project viable, because either the expansion shippers or the pipeline must be willing to fully fund the project. However, subsequently, when a pre-expansion shipper's existing contract expires it could be required to pay a higher rate than its existing vintage rate. This would occur where the pipeline is fully subscribed and there is a competing bid higher than the pre-expansion rate. In addition, the Commission has suggested rolled-in rates could be approved before the expiration of current contracts if (1) the facilities are needed to improve service for existing customers, (2) the increase in rates is related to improvements in service, and (3) raising existing customers' rates does not constitute a subsidy of an expansion by existing customers.

8. Applying that policy in this case, the Commission held that Bay Gas's rolled-in rate proposal would not require the shippers on the original system to subsidize the Whistler spur expansion and therefore rolled-in rates would be consistent with Commission policy. The Commission found that rolling in the costs of the Whistler spur facilities would produce a lower maximum rate for service on Bay Gas's original facilities than if service on the Whistler spur facilities continued to be priced on an incremental basis. The Commission reasoned that, based on the cost of service and rate design volume holdings elsewhere in the order, if Bay Gas's rolled-in rate proposal were rejected, the maximum rates for service on the original facilities would be a reservation rate of $1.5991 per MMBtu for firm transportation-only service, and a usage rate of $0.0526 per MMBtu for interruptible transportation-only service**.** However, rolling in the costs of the Whistler spur facilities would produce maximum rates of $1.3132 per MMBtu for firm transportation-only service, and $0.0432 per MMBtu for interruptible transportation-only service**.** Since rolling in the costs of the Whistler spur expansion would produce lower maximum rates for service to the shipper on the original facilities than a continuation of separate rates for the two sets of facilities, the Commission approved Bay Gas's proposal to design its rates on a rolled-in basis. The Commission therefore adopted maximum fair and equitable rates equal to $1.3132 for firm service and $0.432 for interruptible service. The Commission also rejected Southern's request that, if rolled-in rates were approved, we require Bay Gas to permit shippers with contracts for service on the original facilities to schedule service on the Whistler spur facilities through the use of flexible receipt and delivery points. The Commission stated that intrastate pipelines such as Bay Gas need not offer flexible point rights.

II. <u>Request for Clarification or Rehearing</u>

9. Only Bay Gas seeks rehearing of the June 2 Order. Bay Gas does not object to the Commission's approval of its proposal to design its rates on a rolled-in basis. However, Bay Gas contends that the Commission incorrectly calculated the rolled-in rates. Bay Gas states that the June 2 Order failed to use the rolled-in billing determinants provided

by Bay Gas in its March 9, 2004 filing to design rates. Bay Gas contends that, instead, the June 2 Order combined certain of the October 14, 2004 data responses for the original facilities (that were provided pursuant to the September 21, 2004 Staff Panel), with certain other October 14, 2004 data responses for the Whistler spur facilities, which resulted in billing determinants greatly in excess of system capacity, contrary to Commission precedent. Use of the billing determinants in the October 14, 2004 data responses would double count Whistler spur facilities capacity, according to Bay Gas.

10. Bay Gas states that its current system capacity is 438,000 MMBtu per day, of which 261,433 MMBtu per day is available for the transportation-only NGPA section 311 service that is at issue here. In its March 9, 2004 rate filing, it proposed to use total billing determinants of 304,400 MMBtu per day to design its proposed rolled-in rates. That 304,400 level was based on firm transportation-only contract demand of 285,200 MMBtu per day and an imputed interruptible contract amount of 19,200 MMBtu per day. Bay Gas states that its contract demand for firm service exceeds its available design capacity due to the location of the specific firm receipt and delivery points.

11. Bay Gas states that its October 14, 2004 data responses used incremental billing determinants for the original facilities of 259,900 MMBtu per day and incremental billing determinants for the Whistler spur facilities of 155,700 MMBtu per day, for a total of 415,600 MMBtu. The Whistler spur billing determinants were calculated based on 90 percent of the design capacity of the Whistler spur facilities of 173,000 MMBtu per day.

12. Bay Gas contends that using the combined incremental billing determinants of 415,600 MMBtu to design roll-in rates is inappropriate, since the 415,600 MMBtu amount substantially exceeds its overall available design capacity after roll-in of 261,433 MMBtu. Bay Gas states that use of billing determinants in excess of design capacity is only appropriate to the extent its actual contract demand billing determinants exceed design capacity. Bay Gas's March 9, 2004 rolled-in rate proposal showed that its total contract demand billing determinants are only 304,400 MMBtu, not 415,600 MMBtu. Therefore, Bay Gas asserts that its rolled-in rates should be based on billing determinants of 304,400 MMBtu (which exceed its available 261,433 MMBtu capacity), not the 415,600 MMBtu used in the June 2 Order.

13. Bay Gas further notes that no existing original facilities firm customers' maximum rates would be impacted negatively by the use of the March 9, 2004 filing, *i.e.*, 304,400 MMBtu per day billing determinants, to set rolled-in rates. Moreover, Bay Gas contends that the roll-in using the as-filed billing determinants and the June 2 Order's cost of service would allow for a net reduction in the overall, non-discounted, maximum rate available for original facilities shippers to access all facilities without the roll-in.

III. Responsive Pleadings

14. On July 18, 2005, Southern Company Services, Inc. (Southern) filed an answer in opposition to Bay Gas's request for clarification. Southern contends that the evidence Bay Gas offers in support of its request, which relies on data request responses, is not in the record. Southern argues that the Commission generally does not consider such new evidence, which would be prejudicial at this stage of the proceeding. Accordingly, Southern states that Bay Gas's proffered materials and arguments should be struck.

15. Southern further argues that roll-in of the Whistler spur facilities costs should be denied. First, as stated above, Southern maintains that the extra-record information that Bay Gas did not rely on in its original filing would be improper and prejudicial for the Commission to accept. Secondly, Southern argues that Bay Gas's recalculation would result in a seventy percent increase in the maximum rates applicable to original system shippers, which is inconsistent with the 1999 Pricing Policy Statement.[6]

16. On July 25, 2005, Bay Gas responded to Southern's answer. Bay Gas states that Southern does not challenge the computation of rates using the "traditional methodology that billing determinants should not exceed actual physical pipeline system capacity," which Bay Gas states is the single issue in its request.

17. Bay Gas states that Southern does not challenge the data's accuracy, and that the data request response appended to Bay Gas's July 1, 2005 request is an existing public document, provided on the Commission's website under Docket No. PR02-3, which was relied on as part of the record in this case. Further, Bay Gas states that the Commission has power to take official notice.[7] Bay Gas explains that the policy of prohibiting extra-record information is to protect the Commission from having to chase a moving target on rehearing, but that no such difficulty exists here. Bay Gas contends that the target here has not changed since its March 9, 2004 filing. Moreover, Bay Gas avers that the original filing relied on the 438,000 MMBtu per day that the Appendix "B," Docket No. PR02-3 response data (attached to its July 1, 2005 request), explain and supplement.

18. Bay Gas reiterates that the original facilities shippers do not subsidize the Whistler spur facilities because those shippers pay fixed, discounted rates for their current contract terms. Bay Gas repeats that the roll-in does not change current contract rates or services for any original facilities shipper; no contract rates increase; no contract services decrease; no shipper would pay for the same costs twice.

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[6] For support, Southern cites *Transcontinental Gas Pipe Line Corp.*, 106 FERC ¶ 61,299, at P 57 (2004).

[7] 18 C.F.R. § 385.508(d) (2005).

19. Furthermore, Bay Gas argues that the roll-in conforms to the Commission's no-subsidy policy that "existing shippers should not have the rates under their current contracts changed because the pipeline has built an expansion to provide service to new customers."[8] Bay Gas states that no non-expansion shippers would financially subsidize expansion shippers and the costs of roll-in will improve service for existing customers on grounds of efficiency, accuracy of operations, flexibility, and reliability.

20. Bay Gas states that the roll-in of the Whistler spur facilities costs remains appropriate on the bases of administrative efficiency, lowered costs, more accurate reflection of transportation system operations, additional flexibility, and system reliability. Southern's claim that existing shippers' revenue responsibilities are increased is misleading, according to Bay Gas. Bay Gas contends that Southern confuses existing shippers' current contract rates that will not increase with NGPA maximum rates that will obviously increase (versus Southern's discounted rates). Bay Gas remarks that the 70 percent increase in the original facilities FT maximum rate mistakenly compares and apple with an orange, for $2.7120 uses the as-filed billing determinants for all facilities, whereas the $1.5990 uses the billing determinants for only the original facilities. Bay Gas explains that the correct comparison is between the rolled-in $2.7120 and the not-rolled-in $1.5990 plus $1.2033 (totaling $2.8023), for all facilities. Thus, the roll-in using the as-filed billing determinants and the June 2 Order's cost of service would allow for a net reduction in the overall, non-discounted maximum NGPA rate available for original facilities shippers to access all facilities without the roll-in.

IV. <u>Discussion</u>

21. The Commission agrees with Bay Gas's arguments in its rehearing request that rolled-in rates for the facilities should be calculated using billing determinants proposed in Bay Gas's original March 9, 2004 petition and not its October 14, 2004 data response to the Staff's Panel's September 21, 2004 request in this proceeding. The Whistler spur facilities extend the length of the system, but do not increase the total capacity of the existing system. For rate design purposes, the after-discount adjustment billing units would decrease from 2,587,200 to 1,252,800 MMBtu. Applying these filed billing units to the adjusted cost of service of $3,397,581 results in the rolled-in maximum rates for Bay Gas's section 311 transportation service of $2.7120 per MMBtu for firm transportation-only service, and $0.0892 per MMBtu for interruptible transportation-only service. These re-calculated rolled-in rates are higher than non-rolled-in maximum rates for service on the original facilities. As discussed in the June 2 Order in paragraph 25, "if Bay Gas's rolled-in rate proposal were rejected, the maximum rates for service on the original facilities would be $1.5991 per MMBtu for firm transportation-only service, and $0.0526 per MMBtu for interruptible transportation-only service." Bay Gas provided a

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[8] 1999 Pricing Policy Statement, 90 FERC at 61,392.

calculation of the non-rolled-in rates, as well as the Whistler spur incremental rates of $1.2033 per MMBtu for firm transportation-only service and $0.0396 per MMBtu interruptible transportation-only service, on page 11 of its request for rehearing.

22. The Commission has stated that maximum rates for service on pre-expansion facilities can be increased for projects that improve the pre-expansion service and that, where a project combines an expansion with improvements to existing services, a pipeline can file to increase existing rates when the pipeline can demonstrate that the new facilities are needed to improve service to existing customers. The Commission also has stated that the no-subsidy policy recognizes that existing customers should pay the costs of projects designed to improve their service by replacing existing capacity, improving reliability, or providing additional flexibility.[9] However, there must be a specific benefit from the project for the pre-expansion service rather than generalized benefits resulting from the project being integrated into the system.[10] Here, Bay Gas has not shown any real improvement in the pre-expansion service.

23. Bay Gas contends that the Whistler spur facilities give shippers on the original facilities the benefit of access to additional supplies. However, that cannot be considered a benefit for those shippers in light of the fact that Bay Gas has stated it will not permit those shippers to use the Whistler spur facilities under their existing contracts and we have agreed that, as an NGPA section 311 pipeline, Bay Gas need not offer secondary point rights. Bay Gas has also claimed that the Whistler spur facilities will increase the reliability of the existing shippers' service. However, Bay Gas has not shown that the shippers on the original system have been subject to curtailment or interruption of service in the past. In any event, it is unclear how the existence of the Whistler spur facilities would help the shippers on the original system in case of an interruption of service on the original facilities given the fact that Bay Gas will not permit those shippers to use the Whistler spur facilities under their current contracts. Finally, the greater ease of administering rolled-in rates appears to be primarily a benefit for Bay Gas, not the shippers on the original facilities. Accordingly, the Commission concludes that Bay Gas has not met its burden to show that roll-in of the Whistler spur facilities is fair and equitable.

24. Consequently, Bay Gas's adjusted billing determinants require that the Commission reverse its decision to approve a rolled-in approach for Bay Gas's original system and Whistler spur facilities. A roll-in of the facilities would produce a $1.1130 per MMBtu increase in the maximum rate for firm transportation-only service for the original facilities shippers. This rate increase would require service on the original facilities potentially to subsidize the Whistler spur expansion shippers. The Commission

[9] *Id.*

[10] *Transcontinental Gas Pipe Line Corp.*, 106 FERC ¶ 61,299, at P 75 (2004).

rejects Bay Gas's argument that rolled-in facilities would provide shippers using both the original and Whistler spur facilities with a lower rate. The re-calculated rolled-in rates result in a higher maximum rate for service on the original facilities when compared to the present non-rolled-in rates. The Commission also finds that Bay Gas's assertion that no existing original facilities firm shippers' rate would be impacted negatively by the use of rolled-in rates because they presently hold heavily discounted rates for the terms of their contracts is misplaced. Commission precedent requires that the pipeline's approved maximum rates be fair and equitable. Because the rolled-in rates will exceed the maximum rates applicable to service on the original facilities, we find these rates not to be fair and equitable.

The Commission orders:

(A) Bay Gas's request for rehearing is hereby granted, as discussed in the body of this order.

(B) Bay Gas's proposal to roll in costs of the Whistler spur facilities is hereby denied.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.